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ABSTRACT

This workshop presenter's guide is intended for use by administrators in training one another in the Project Leadership program developed by the Association of California School Administrators (ACSA). The purpose of this particular guide is to train administrators to interpret common contract provisions that affect management's decision-making authority and to provide administrators with a guide to help them analyze their districts' union contracts and the limitations they place on administrator latitude in making decisions. The guide gives a brief historical review of the problems principals face in contract administration, presents a hypothetical grievance case, and then covers topics of grievance procedures, arbitrability, maintenance of standards, precedence of agreement, preeminence of agreement, and duty to bargain. Written to be read aloud, the guide contains a script, suggestions for conduct of the session, an 8-item reference list, 2 appendices containing an arbitrator's opinion in both a real and a hypothetical situation, 4 handouts, and masters of 15 numbered transparencies. (IW)

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# Contract Administration:

# Understanding Limitations on Management Rights

A Presenter's Guide

Research Based Training for School Administrators

Center for Educational Policy and Management
College of Eucation, University of Oregon
Eugene, Oregon 97403

EA018621

# Contract Administration: Understanding Limitations on Management Rights

PROJECT LEADERSHIP PRESENTER'S GUIDE

Prepared by the Research-Based Training for School Administrators Project

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A training model called Project Leadership developed by the Association of California School Administrators (ACSA) was selected as a vehicle for the purpose of disseminating research and state-of-the-art literature to school administrators. Project Leadership is built upon two key ideas: networking and administrators training one another using scripted workshop materials called Presenter's Guides. This is a Presenter's Guide developed by the team at the Center for Educational Policy and Management (CEPM).

All members of our team at CEPM have contributed in some way to this guide. Steven Goldschmidt, William Auty, Glen Giduk, and Max Riley developed guides, provided technical assistance to administrators, and field-tested the material. We are grateful to Debbie Rauch for her clerical assistance and to Margaret Sjogren for her graphic designs.

## USING THE GUIDE

The guide is written so that it can be read aloud, but we believe you will want to make changes and provide your own examples. You should adapt the material to your personal needs and the needs of your audience.

You are equipped with the Presenter's Guide, which contains a script and suggestions for the conduct of the session (in italics). In the back you will find the following: (1) a reference list of the sources cited or referred to in the text, (2) appendices, (3) handouts, and (4) masters of numbered transparencies that have been designed to give visual emphasis to the main points of your presentation.

## PRIOR TO THE WORKSHOP

1. Review guide -- the script, transparency masters, and handout materials -- prior to the workshop.
2. Prepare copies of handout materials for each participant.
3. Prepare transparencies from the "masters." These are especially appealing when colors are added.
4. Arrange for meeting room facilities: Ideally, the facilities will offer places for participants to write as well as areas for breaking up into small groups.
5. Arrange to have an overhead projector, screen, three-prong adapter and extension cord at the meeting room. Insure that the room is equipped with a chalkboard or flipchart visible to all participants.
6. Arrange for coffee or other refreshments, if desirable.

OUTLINE

1.0 INTRODUCTION

2.0 HYPOTHETICAL GRIEVANCE

3.0 GRIEVANCE PROCEDURE

- 3.1 Grievance definition
- 3.2 Arbitrability

4.0 MAINTENANCE OF STANDARDS

5.0 PRECEDENCE OF AGREEMENT

- 5.1 Preeminence of agreement
- 5.2 Duty to bargain

6.0 THE HYPOTHETICAL RECONSIDERED

## 1.0 INTRODUCTION

Since 1960, collective bargaining by school employees has spread rapidly across the United States. Teachers now have access to some form of bargaining in at least 37 states (Kheel 1981). As a result, collective bargaining has become an integral part of the management of the majority of American schools.

SHOW TRANSPARENCY #1

As teachers have won the right to bargain, they have pressed for an increasingly broader range of topics over which they may negotiate. Teachers, like other professionals, prefer to control the conditions of their work environments. As professional educators, many believe they are qualified to manage schools, and indeed the tradition of promoting administrators from the ranks of teachers tends to support that belief.

Inevitably, the movement toward collective bargaining for teachers and the expansion of the number of topics bargained over has significantly changed the job of managing schools. School boards may find their policy-making prerogatives restricted by union contracts. For example, when student discipline procedures and class size are included in a teacher union contract, school boards may be unable to make policy changes in those areas without first bargaining with the union. Superintendents may discover they frequently must negotiate decisions that were

formerly made without consultation. For example, the assignment and transfer of teachers, a common responsibility of superintendents only a few years ago, now is often controlled by procedures outlined in union contracts. Perhaps most profound, however, has been the effect on the work of principals.

ACTIVITY: *Ask participants to describe some effects bargaining has had on the work of principals. Be prepared with some examples of your own. For example, McDonnell (1981) suggests that principals are less able under collective bargaining to determine which teachers will work in their buildings and what tasks they will perform, since these are areas often determined through negotiations.*

As management's representative in the schools, the principal may find the union giving a disconcerting amount of attention to the most ordinary administrative decisions. The more frequent use of the grievance process, which has accompanied the growth of collective bargaining, lends added significance to all administrative actions. As one teacher union official remarked, "A teacher-school board contract is only print and paper unless it is implemented by adherence of the parties to the contract. It really comes alive when the meaning of its words, phrases, sentences, and paragraphs are probed by questioning teachers -- and answers are found through the use of the grievance process."

While unions are probing principals' decisions through the grievance process, pressure on principals may be applied as well by the district office. Superintendents and school board members frequently must rely on principals to represent management's interests in the application of contract language to the day-to-day operation of schools. The ability of principals to implement the

interpretations of contract language preferred by their superiors may have important implications for management's overall labor relations strategy.

Concurrent with their role as the building-level representative of management, principals also are responsible for the development of effective educational programs. Some research suggests that principals are a key component in determining the quality of education in their school (Edmonds, 1979). As educational leaders, they carry great responsibility for developing and maintaining effective teaching forces in their buildings.

Thus, there are at least two reasons why it is incumbent upon principals to be skilled in interpreting and administering contracts. As an educational leader, the principal needs to exhibit sophisticated managerial skills. Repeatedly having decisions overturned through the grievance process may damage the principal's stature as a leader. Likewise, failing to represent management interests effectively by incorrectly interpreting a contract may have dire consequences for career advancement or even for continued employment. Mitchell et al., in their recent study of collective bargaining in schools, observed one fairly large school district that replaced 80 percent of its principals in 6 years. In the words of the superintendent, the need for the change was "to bring administrators with the skills required to work within the contractual process into middle management positions" (1981, p. 160).

In the early days of teacher bargaining, administrative training efforts focused on preparing superintendents, negotiators, and school board members to represent management in contract negotiations. As bargaining relationships have matured, however, many observers have suggested that daily implementation and interpretation of a contract are at least as important as formal negotiations in determining the employment relationship. The purpose of this workshop is to begin to address the problem of training administrators to interpret common contract provisions that affect management's decision-making authority. In addition to acquiring skills in reading and understanding contract language during today's meeting, each of you will receive a guide to help you analyze your district's union contracts and the limitations it places on administrator latitude in making decisions.

## 2.0 HYPOTHETICAL GRIEVANCE

I would like you to consider a hypothetical grievance. To accomplish this activity, we need to form small groups. Each of you will read the grievance and then participate in developing your group's response to the questions at the end. In order to assist you, I will distribute a form on which you may record your response to each question and outline the reasoning that supports your response.

| DISTRIBUTE HANDOUTS #1 and #2 |
|---|

*Break participants into small groups of three, five, or seven people depending on the number of participants. Allow about 45 minutes for them to complete the*

*task. To keep the activity focused, remind them periodically of the amount of time allotted to the task. It is important that you be familiar with the grievance and go through the activity at least once before the workshop.*

*At the conclusion of the allotted time, call for group reports. Using sheets of newsprint, try to capture the essence of each group's decision on each of the four issues. Attach the sheets of newsprint to the wall for reference later in the program. If there are marked differences in interpretation, call them to the attention of the participants by providing a summative statement of positions taken and points of disagreement.*

The situation you have been considering is based on a synthesis of actual grievances that occurred in several school districts. Each grievance was taken to binding arbitration for a decision, and the arbitrators were called upon to answer the questions you have been considering. We will conclude our workshop today with an indepth look at arbitrators' answers to these questions and their supporting reasons. First, however, I would like to introduce you to, or reacquaint you with, the three types of contract clauses we will be considering today.

SHOW TRANSPARENCY #2

The three types of contract clauses listed are sometimes included in bargaining agreements as a result of the parties' recognition that no contract can provide specific guidelines

on how to settle all the various conflicts that may occur in the conduct of a school district's business. The employment relationship is too complex to be completely captured in one writing. Teachers and school boards may, therefore, attempt to negotiate the parameters within which decisions over unforeseen circumstances will be made. This does not mean that all these clauses are in every contract. However, if they are included or proposed for inclusion in your contract, you need to know what they mean. Let's consider each of these provisions in turn.

## 3.0 GRIEVANCE PROCEDURE

The grievance procedure is an orderly process for resolving disputes over the interpretation of the contract. Unions often feel that a strong grievance procedure is the heart of a collective bargaining agreement (Elkouri and Elkouri 1973, p. 106). A contract that promises much may deliver little if it cannot be enforced. Critical to the enforcement of a contract, in the view of many labor professionals, is provision for unresolved grievances to be appealed to a binding decision by a neutral third party--an arbitrator.

### 3.1 Definition of Grievance

Analysis of a grievance procedure begins with an inspection of the contract's definition of a grievance. The definition of a grievance serves two major purposes.

SHOW TRANSPARENCY #3

First, the contract's definition of grievance prohibits the arbitrary or discriminatory exercise of administrative authority. An arbitrary decision is one based on emotion or prejudice rather than sound reasoning. A discriminatory decision causes employees to be treated differently without good reason. For example, a decision by a school principal to allow only teachers with green cars to park on campus would be discriminatory since there is presumably no sound reason to support it. This is not to suggest that an administrator may not treat employees differently. Rather it means that different treatment must have a basis in sound, acceptable reasons that promote educational goals.

*Pause here to make sure your audience understands this definition. Consider asking volunteers to cite examples of arbitrary or discriminatory decisions. Be prepared with an example of a <u>defensible</u> instance of discrimination. For example, requiring only counselors to administer and score tests discriminates between counselors and other certificated staff. However, the discrimination is justified by the counselors' special training and higher pay. Avoid discussing discrimination in the sense of race or sex discrimination. Those types of discrimination are treated as special classes by the legal system and are resolved under standards much more strict than the more general issue of discrimination with which we are concerned. Your discussion should focus on a general discussion of the pitfalls of treating employees differently without having a reason based on promoting effective, efficient schools.*

A frequent source of disagreement during teacher-school board negotiations is the range of disputes that may be resolved through the grievance process. The second purpose of the

contract's definition of grievance is to describe the range of grievable conflicts, commonly known as the scope of the grievance procedure.

SHOW TRANSPARENCY #4

A definition of grievance might refer to any or all of these items. Consider, for example, the language of Article 9.2.1 from our hypothetical grievance.

SHOW TRANSPARENCY #5

Here we have a broad definition of grievance that, in addition to the terms of the contract itself, includes disputes over administrative rules and regulations and written school board policies.

In order to demonstrate the impact of including these other elements, I brought copies of a district's teacher contract, board policies, and a handbook of administrative rules for interpreting board policies.

*Display copies of each document that you have brought with you. The purpose is to visually demonstrate the number of rules and policies that may become grievable depending on the definition of a grievance that appears in the contract.*

A definition of grievance that includes only disagreement over contract language restricts the subject matter of grievances to the content of the contract. *(Display teacher contract.)* If the definition refers to board policies and administrative rules,

then disagreements over the interpretation of the contents of these documents *(display board policies and administrative rules)* may also be grieved. Finally, if past practices are covered, then grievances may be filed over changes in any of the unwritten procedures that have informally developed in your district to carry out tne work of educating students.

We can derive two major implications for administrative work from a broad definition of grievance.

SHOW TRANSPARENCY #6

First, decisions made by management to implement school board policies or rules included in the definition may be challenged as unfair or inequitable. Grievances often take first priority in a manager's work schedule. Thus, as a broader range of administrative decisions are considered grievable, the handling of grievances often causes administrators to cut back on other work. For example, a school principal confronted with several grievances with very strict time limits for response, may find it difficult to carry out staff evaluations, respond to student discipline problems, or engage in other activities related to the education of students until he or she has responded to the grievances.

Second, if school district policies, rules, and procedures are arbitrable as well as grievable, arbitrators may find themselves influencing school district policy. In the course of resolving disputes over educational policies, an arbitrator

is called upon to arrive at a fair interpretation. Clearly, there is a possibility that an arbitrator may interpret a policy very differently from the school board's intended interpretation at the time the policy was written. Of course, once a policy or rule has been interpreted by an arbitrator, a precedent is established that may prove difficult to change except through subsequent negotiations. Thus, a broad definition of grievance can potentially effect fundamental changes in the way educational policies are made and interpreted in your district.

The issue of the potential impact of arbitrators' decisions on managerial authority brings us to the second step in analyzing a contract grievance procedure. Faced with teacher demands for a broad grievance procedure, school boards and administrators have sometimes bargained for contract language that allows a broad range of disputes to be grieved, but only a much narrower range of disputes to be resolved, by an arbitrator. Therefore, the second step in analyzing a grievance procedure is to determine which grievable disputes are also subject to binding arbitration by a neutral third party.

3.2 Arbitrability

Determination of the arbitrability of a grievance requires the resolution of two major sub-issues.

| SHOW TRANSPARENCY #7 |
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Procedural arbitrability refers primarily to the determination

of whether grievance procedure timelines have been observed. School boards may challenge the arbitration of a grievance on the grounds that timelines for filing or processing grievances were violated by the union. In addition, a challenge to the procedural arbitrability of a grievance may stem from failure to use proper forms, failure to file with the proper person, or failure to meet other procedural requirements. Consider, for example, the timelines established in the contract language from our hypothetical grievance.

SHOW TRANSPARENCY #8

The determination of whether our hypothetical grievance is procedurally arbitrable rests on whether the grievance was filed in conformity to the language. As we shall see later in our hypothetical case, this language played an important role in the arbitrator's decision concerning the grievance's arbitrability.

The second issue is the determination of substantive arbitrability--that is, whether the dispute meets the contract's definition of an arbitrable grievance. We noted earlier that contracts may include different definitions of grievable and arbitrable disuptes. Often, fewer types of conflicts are arbitrable than are grievable. For example, compare the definitions of grievalbe and arbitrable disputes in our hypothetical case.

SHOW TRANSPARENCY #9

As you can see, administrative rules and regulations as well as written school board policies may be grieved in this district but they are not subject to resolution through arbitration. Rather, the school board has retained final authroity to settle disputes over policies and administrative rules.

To summarize, we have suggested that a major determinant of a contract's impact on managerial authority is the wording of the grievance procedure. Further, we suggested that analysis of the grievance procedure should proceed in two steps. It should (1) determine the scope of the contract's definition of grievance and (2) determine what types of disputes are subject to binding arbitration. Let's turn now to a consideration of other types of contract clauses with implications for the exercise of administrative authority.

## 4.0 MAINTENANCE OF STANDARDS

The second type of contract clause we will consider today is the maintenance of standards clause. A major goal of unions is to secure and maintain benefits for their members. Often the survival of unions depends on their ability to obtain benefits members do not believe they could have achieved without union intervention. Having gained concessions that improve benefits for members, unions attempt to protect those gains by limiting management's authority over decisions that may threaten members' rights or compensation.

Of course no contract can anticipate all the various circumstances that may lead to management decisions that have a negative impact on members' benefits. Faced with this inability to negotiate specific provisions to cover all potentially adverse decisions, unions may resort to negotiating a maintenance of standards clause.

The purpose of the maintenance of standards clause is to guarantee the continuance of benefits and rights that union members have previously enjoyed. To understand how the clause might achieve this goal, let's consider some examples taken from two different school employee contracts.

Example number one is taken from a school cafeteria workers' contract in Michigan.

| SHOW TRANSPARENCY #10 |
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*The transparency shows the clause with various phrases in bold print. Point them out as each is discussed.*

Here we have an example of a broadly written clause, in that "all conditions of employment" must be maintained "at not less than the minimum standards in effect in the district at the time this agreement is signed." If we look for clarifications as to the meaning of "conditions of employment," we find that phrase includes working hours, extra compensation, relief periods, leaves, and "general working conditions." Finally, we note that where the district can demonstrate financial hardship, it may modify this clause.

Consider for a moment the implications of this clause. Any management decision that may negatively affect a "condition of employment" or a "general working condition" of cafeteria work is now subject to being overturned through the grievance procedure. While the clause lists examples of the meaning of "conditions of employment" that are commonplace and easily understood, the phrase "general working conditions" may be less clear. Other than the items listed, such as leaves and extra duty pay, can anyone think of examples of what might be a general working condition of cafeteria workers?

*Solicit examples from participants. It may be useful to generate a list on paper or a chalkboard. The purpose is to develop a list of subjects over which management decisions might be challenged as violating the maintenance of standards clause. For instance, suppose a high school experienced a dramatic increase in enrollment and as a result found it necessary to allow students to park in an area previously reserved for cafeteria workers. Might this maintenance of standards clause prohibit such a decision? Suppose a restroom near the kitchen is closed because it is too expensive to repair, and cafeteria workers must walk to restrooms across the school grounds? How about a decision to use fewer teachers for lunch supervision in order to provide more time for parent conferences?*

Consider a second example of a maintenance of standards clause.

| SHOW TRANSPARENCY #11 |
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Here we find an example of a maintenance of standards clause that not only is unlabeled, but exists as merely a phrase in a sentence.

*(Refer to bold print on transparency.)* As you can see, in the process of analyzing a contract for impact on administrative decision-making authority, you cannot rely on the labels that are attached to the various provisions. In this case we have an example of a much more narrowly drawn maintenance of standards clause. Management is merely precluded from unreasonably depriving employees of benefits they now enjoy.

Nevertheless, relying on this provision, employees in a school district grieved to arbitration a management decision to eliminate an itinerant physical education teacher position at the elementary level. Teachers argued that they had been allowed an informal preparation period when the physical education teacher took over their classes. The district's decision to discontinue the program, argued the union, unreasonably deprived teachers of that preparation period in violation of the maintenance of standards clause. The district relied on the fact that the union had unsuccessfully sought a preparation period for elementary teachers during recent negotiations and had agreed to the management rights clause in Part A. The arbitrator's discussion of the arguments is instructive.

SHOW TRANSPARENCY #12

*Read excerpt in Appendix A while referring to highlights on the transparency. The decision demonstrates the power of even so limited a maintenance of standards clause as is illustrated in this example. Despite insertion of a management rights clause and management's refusal during negotiations to consent to preparation periods, teachers in this instance had sufficient grounds to advance a claim for preparation periods based on a prevailing practice and a maintenance of standards clause.*

As these examples illustrate, an important step in analyzing your district's contracts for limitations on managerial decision-making is to note the presence and scope of any maintenance of standards clause.

## 5.0 PRECEDENCE OF AGREEMENT

### 5.1 Preeminence of Agreement

When union negotiators have successfully bargained a contract which establishes or protects particular benefits for members, they are understandably concerned that the contract take precedence over any contrary board policies or established practices. Likewise, unions may be concerned that no alterations be made in established employee working conditions without negotiations over the proposed changes. A precedence of agreement clause may be inserted in the contract to achieve one or both of these goals.

SHOW TRANSPARENCY #13

Our hypothetical grievance contains a precedence clause (*direct participants to look at Article 7 in the hypothetical case) that addresses the first goal.* Quite simply, it states that where conflicts arise

The second category refers to subjects usually bargained or not bargained according to the discretion of management. Management may bargain over permissive subjects but is not required to do so.

The state collective bargaining statutes have adopted the mandatory-permissive distinction. In those states, public managers are usually charged with the continuing duty to bargain over changes in mandatory subjects during the life of a contract unless they demonstrate that (1) they have bargained over the topic during contract negotiations, or (2) the employer is for some reason excused from bargaining the subject. Failure to bargain before establishing or changing rules governing a mandatory subject may constitute an unfair labor practice, and the union may appeal to a state employment relations board for redress.

A precedence of agreement clause like the one I just distributed has two purposes.

| SHOW TRANSPARENCY #15 |
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First, the clause serves as evidence that management has a duty to bargain over subjects covered by the clause and attempts to weaken any argument of management that the duty to bargain over those subjects has been satisfied. The second purpose is to open the possibility for the union to grieve to arbitration a failure to bargain over changes in working conditions. Ordinarily, the failure to bargain constitutes a violation of state law and only a state agency, such as a court or employment relations board, may provide a remedy. Generally, arbitrators are empowered to

interpret contracts, not laws. If an arbitrator's award is based primarily on interpretation of the law, the award may later be nullified on the grounds the arbitrator has exceeded his or her authority. However, when a precedence of agreement clause incorporates the duty to bargain into the contract, the matter becomes a proper subject for arbitration.

*The discussion you have just presented is highly technical and participants unfamiliar with the subject have difficulty with the concepts. Try to assess your audience's degree of comprehension. One technique might be to ask for volunteers to list permissive as opposed to mandatory subjects.*

In summary, the precedence of agreement clause has two potential implications for management decision-making. First, it may establish that contract provisions have priority wherever they conflict with local board policies. Second, the clause may grant arbitrators the authority to overturn a management decision for failure to bargain with the union over a change in a mandatory subject for negotiations.

## 6.0 THE HYPOTHETICAL RECONSIDERED

*You are now ready to reconsider the hypothetical grievance used at the beginning of the workshop. Let participants know that this is the concluding summary of the issues raised throughout the workshop. The arbitrator's opinion, included under Appendix B, contains a discussion of each topic covered. We suggest that you outline the arbitrator's discussion and lead your participants through an issue-by-issue reconsideration of the hypothetical case. You may wish to highlight phrases or sentences in the arbitrator's decision and read them by way of explanation. However, we suggest that you should not read the text of the arbitrator's decision to your group. Rather,*

*become familiar enough with the reasoning to lead your participants through the discussion. If you wish to reproduce and hand out copies of the arbitrator's decision, please do so. However, you may find it more satisfactory not to distribute the decision until the end of your workshop. It is difficult to lead a discussion with a group that is reading a document at the same time.*

REFERENCES

Arbitration between Lincoln Consolidated Schools and Lincoln Education Association, MEA/NEA, 105 Arbitration in Schools 14, (Brown, Arb.)

Arbitration between South Allegheny School District and South Allegheny Education Association, 102 Arbitration in Schools 6, 1978 (Dean, Arb.)

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APPENDIX A: ARBITRATOR'S OPINION

" . . . It is true that the Association attempted, through the negotiations process, to protect the District's professional employees from loss of preparation periods, by inserting a provision into the contract, and that the District never consented. By omission of any such provision, the District desires to draw the implication that it has never abdicated its managerial rights under Part A of the Preamble. The existence of Part B of the Preamble, however, blunts the effect of Part A, bringing controversies such as the instant case within the scope of arbitrability, without emasculating the total effect of the managerial rights clause.

The Collective Bargaining Agreement contains specific provisions upon which the Association can base its claim in the instant controversy, notwithstanding the 'Managerial rights' section, set forth by the District. Although the District maintained the right to make managerial decisions, it specifically agreed in Part B of the Preamble 'to treat all of the employees fairly and reasonably,' and agreed to 'not unreasonably deprive the employees of any of the benefits they now enjoy.' This first criterion of the Preamble Part B must be read as one of several limitations upon management rights that demands a subjective judgment upon which this Arbitrator would find it difficult to rest his entire opinion. The second criterion, the deprivation of benefits presently enjoyed, however, is a more objective standard, and, of all the contractual provisions cited by the Association,

this one, although once again broadly worded and subject to many possible interpretations, appears to be the crux of the case. The elementary teachers of self-contained classrooms had enjoyed a preparation period. This is surely a benefit and therefore has to fall within the ambit of the protective language of the second half to Part B of the Preamble. This provision limits the right of the District to make an alteration in the elementary physical education program, when the direct effect of this change would be to unjustly deprive elementary teachers of the benefits they have previously enjoyed." (Arbitration between South Allegheny School District and South Allegheny Education Association, 1978.)

APPENDIX B: ARBITRATOR'S OPINION--HYPOTHETICAL GRIEVANCE

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| In the matter of arbitration between<br>SALTMINE SCHOOL DISTRICT<br>-and-<br>THE SALTMINE FEDERATION OF TEACHERS | Opinion and Award |

Before: Noah Zall Seasall, Arbitrator

Issue Number One: Arbitrability

The first issue for resolution is whether the grievance is arbitrable. If the grievance is not arbitrable, then no ruling need be made on the merits of the grievance.

The District contends the grievance is both procedurally and substantively faulty. The procedural error, they argue, is that contract timelines for filing grievances were not followed. The substantive error is that the grievance does not fall within the definition of a contract grievance contained in Article 9.

Procedural Arbitrability

With regard to the question of procedural arbitrability, the district points out that Article 9.3.2 requires that grievances be filed within 20 work days of "knowledge of an act, omission, or event giving rise to the grievance." The grievants were made aware of the changes at issue on April 15, when the general announcement was made by Principal Legree, and yet did not file the grievance until September 15. Therefore, according to the district, the grievance must be dismissed as untimely.

The union argues that the announcement of the proposed change was insufficient to warrant a grievance since an action merely proposed may be reconsidered. They point out that Article 9.2.1 requires that an event or condition "...affect the conditions or circumstances under which a unit member works" in order to be grievable. The event, in this instance, which affected the conditions or circumstances of employment was the actual schedule change in September, not the announce-

ment of the proposed change in April. Therefore, the 20 working day time limit for filing a grievance, as outlined in Article 9.3.2, is properly calculated from the opening day of school when the new schedule went into effect. Since the grievants met this timeline, the grievance is not procedurally defective.

Substantive Arbitrability

The District also contends the grievance is not substantively arbitrable because it does not pertain to a dispute over the application or interpretation of the agreement as required in Article 9.3.4. In support of its position, the District argues that the Article 6 requirement of at least one 30-minute preparation period per day is being met. Therefore, a grievance over a preparation period not provided by the contract cannot be said to be a dispute over the interpretation or application of the agreement.

Conversely, the union asserts that the grievance is arbitrable since the provision of a weekly preparation period for three years establishes a practice which is protected by the maintenance of standards clause (Article 4).

The U.S. Supreme Court considered the question of substantive arbitrability and established a test to determine when a grievance is arbitrable.

> An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause does not cover the asserted dispute. Doubts should be resolved in favor of coverage.*

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*United Steelworkers of America v. Warrior and Gulf Navigation Company, 363 U.S. 574, 582-3.

For the arbitrator to rule that this grievance is not substantively arbitrable, it must be found that the union's argument is not a plausible construction of the contract. The union's argument, however, of an established past practice is not rebutted by the District, and the arbitrator is of the opinion that reasonable people could construe the contract to support the union's position. Therefore, it cannot be said with positive assurance that the arbitration clause in Article 9.3.4 is not susceptible of an interpretation that covers the dispute over the weekly preparation period. The grievance meets the test of substantive arbitrability and the merits of the grievance must be considered.

Issue Number Two: The Duty to Bargain

The second issue presents the question of whether the district, in unilaterally depriving primary teachers of a weekly preparation period, has failed to meet its obligation to bargain over changes in working conditions.

Elements of the employment relationship which may be proposed as subjects for bargaining are often divided into three categories: mandatory, permissive, and prohibited.

Mandatory subjects for bargaining are those that an employer is required to negotiate if proposed by the union. Subjects are mandatory if, on balance, they have a greater effect on conditions of employment than on the determination of educational policy. They are aspects of the employment relationship which are of greatest concern to employees and include such matters as compensation, rest periods, hours

of employment, and vacations.

Permissive subjects for bargaining are those matters that employers are not required to bargain but which they may bargain at their discretion. Permissive subjects are commonly held to be management prerogatives or matters of educational policy which include such concerns as assignment of personnel, the size of the work force, and allocation of resources.

Prohibited subjects for bargaining are those which neither party may negotiate or agree to because they require the commission of an illegal act. For instance, a contract provision which would require management to deprive workers of constitutionally protected rights or violate a state statute would be a prohibited subject for bargaining.

Even after a contract has been negotiated and signed, management continues to bear the responsibility to negotiate with the union prior to establishing or clarifying rules which govern mandatory subjects for bargaining. This responsibility, commonly known as the duty to bargain, stems from the recognition that mandatory subjects are intimately connected to the welfare of employees. Permitting management to make unilateral changes in these areas has the potential for threatening the stability of labor relationships and altering the balance in employer-union power established by state law. Alternatively, requiring negotiations before changes are made in mandatory subjects is often thought to promote a peaceful labor relationship and maintain equal bargaining power.

In the instant case, the union charges that preparation periods during students' physical activity instruction (hereinafter "P.E. preparation periods") constitute a mandatory subject for bargaining and that the district was therefore remiss in making unilateral changes in P.E. preparation periods without first negotiating with teachers. In placing this issue before the arbitrator, the union errs.

Certainly it is true that no "zipper" or integration clause appears in the contract and therefore a case might well be made that the employer was not excused in this instance from a duty to bargain over the change in P.E. preparation periods. (An employer is excused from bargaining changes in a mandatory subject during the life of the contract if the employer can demonstrate that bargaining over the subject took place during contract negotiations. A zipper clause is an express waiver by the union of the right to bargain over mandatory subjects during the term of the agreement. It constitutes a waiver of the right to bargain mandatory subjects by establishing that all mandatory subjects for bargaining are to be treated as if they had been raised and discussed during negotiations. See sample zipper clause attached to this opinion.)

Nevertheless, absent a contractually imposed duty to bargain, the arbitrator is without authority to rule on this issue. Arbitrators function to interpret contracts, not state laws. The duty to bargain over proposed changes in mandatory subjects emanates from state law. In the absence of a contract provision which imposes a duty to bargain over changes in mandatory subjects, the

arbitrator would be exercising inappropriate authority to find the district in violation of state law.

Inspection of the parties' agreement reveals no such contractually imposed duty. For example, the contract's precedence of agreement clause, where a duty to bargain is commonly incorporated when agreed to by the parties, merely establishes the superiority of the contract over other district policies in the event of a conflict. Further, Article 9.3.4(c) specifically limits the arbitrator's authority to the interpretation of the agreement. Therefore, the union's argument on this issue is without merit.

Issue Number Three: Discrimination

The third issue concerns the allegation of unfair and inequitable treatment. Article 9.2.1 (Grievance Definition) prohibits unfair or inequitable treatment of unit members. The fact that upper grade teachers are permitted a P.E. preparation period while primary teachers are not is prima facie evidence of discrimination. Absent a showing by the district of a valid and rational basis, i.e., a basis in fact, for the discrimination, the arbitrator would necessarily sustain the grievance as a violation of Article 9.

In defense of the elimination of primary teachers' P.E. preparation periods, the District introduced evidence to show that revenues from the state decreased by approximately $100,000 over the last two years as a result of declining enrollment. Therefore, the District argues a state of financial exigency preceded the elimination of primary

teachers' P.E. preparation periods. Further, the district points out that, after due deliberation, the school board's decision was that a reduction of the elementary P.E. program was the least damaging of several alternatives.

Faced with the order to reduce his school's P.E. program, Principal Legree informally consulted with his staff and determined that physical education was more important for older students than for younger students for several reasons:

1. Primary students at S.E.S. already enjoyed more recess time and a shorter school day than upper grade students.
2. The building physical education teacher advised Principal Legree that, due to differences in maturity, older students were more able to benefit from formal physical education activities.
3. Test scores in reading and mathematics have demonstrated that primary students at S.E.S fall well below the national norm and therefore they need intensive instruction in the basic skills areas. Physical education classes represent time away from reading and arithmetic classes, and many parents consider basic skills to be much more important than physical education.

The evidence offered by Principal Legree in support of his decision to eliminate primary physical education was uncontested. No evidence was brought forth to suggest that Principal Legree's decision was arbitrary (i.e., not based

on sound educational judgment) or that the decision was motivated by malice toward the grievants. I find the decision to eliminate the primary P.E. program, and thereby to eliminate the primary teachers' P.E. preparation period, was motivated by professional concerns and was made to effect a reasonable educational decision -- that physical education was more important for older students. Principal Legree, by his actions, did not unfairly discriminate against the grievants.

Issue Number Four: Maintenance of Standards

The fourth issue presents the question of whether the district, by eliminating the grievants' P.E. preparation periods, violated the maintenance of standards clause.

The maintenance of standards clause provides protection for "employment benefits" enjoyed by teachers. Therefore, it must first be determined whether the P.E. preparation period is an employment benefit. Employees' benefits may be established by law, by school board policy, or by agreement between the parties. No evidence has been brought forward to suggest that P.E. preparation periods are a benefit guaranteed to the grievants by law or school board policy. With regard to the agreement between the parties, the district argues, and the Federation does not contest, that no specific contract provision establishes the grievants' right to P.E. preparation periods. However, it is commonly recognized that labor relations agreements are negotiated in an environment of established practices. Rarely is it suggested that a

formal contract contains an exhaustive description of the entire labor relationship. As one arbitrator said, "It is generally accepted that certain, but not all, clear and long standing practices can establish conditions of employment as binding as any written provision of the agreement."*

Therefore, the threshold question is whether P.E. preparation periods are an employment benefit established by past practice. If P.E. preparation periods are an established practice, then we may proceed to the question of a contract violation. Of course, if no past practice is demonstrated, then no question of a contract violation is raised.

In How Arbitration Works, Elkouri and Elkouri (1973, p. 391) quote arbitrator Jules J. Justin: "In the absence of a written agreement, 'past practice,' to be binding on both parties, must be (1) unequivocal; (2) clearly enunciated and acted upon; (3) readily ascertainable over a reasonable period of time as a fixed, and established practice accepted by both parties." (citation omitted).

In the instant case, the acceptance of the practice is clearly unequivocal. All primary teachers received a P.E. preparation period during the entire three years. The practice was "clearly enunciated and acted upon." The teachers obviously knew they were receiving the preparation period and Principal Legree developed the schedule that included the preparation periods. Finally, the practice was

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*Alpena General Hospital, 50 LA 48, 51 (1967), quoted in Elkouri and Elkouri, How Arbitration Works, 389 (BNA 1973).

accepted by both parties. Indeed, the administration exercised its discretion under Board Policy #310 for three consecutive years in establishing the practice. Accordingly, I find the P.E. preparation period to be an employee benefit clearly established by past practice.

Finally, we turn to the question of a violation of the contract maintenance of standards clause. The district makes three arguments in support of its position. First, it points out that P.E. preparation periods are not mentioned in any contract provision and that no guarantee exists, regardless of the three-year practice, that P.E. preparation periods would continue to be granted. However, although the contract does not specifically mention P.E. preparation periods, Article 4 contains a maintenance of standards clause. Therein the district guaranteed that unit members would continue to receive benefits at "not less than the highest standards in effect as of the date the agreement is signed." Clearly, P.E. preparation periods are an employment benefit enjoyed by primary teachers at the time the agreement was signed. To argue now that the contract is silent on the matter of P.E. preparation periods is to fly in the face of the common meaning and purpose of a maintenance of standards clause.

Second, the District cites Board Policy #310 which states in relevant part:

> It shall be the policy of the district to provide for teachers the maximum preparation time permitted by financial and program considerations. The determination of the amount of preparation time shall be at the sole discretion of the District. (emphasis added)

They contend this policy gives management sole discretion in the matter of granting preparation time beyond the requirements of Article 6. However, in so arguing, the District ignores the content of Article 3, Agreement Has Precedence. Therein the District agreed that "This agreement shall modify, replace, or add to any policies, rules, regulations, procedures, or practices of the District which shall be contrary to or inconsistent with its terms" (emphasis added). The effect of this provision is clearly to establish the supremacy of contract provisions over conflicting board policies. Therefore, a board policy cannot control where a contract provision is in contradiction. As demonstrated above, the maintenance of standards clause in this instance establishes the continuity of teacher P.E. preparation periods. To hold Board Policy #310 superior to the maintenance of standards clause would be to ignore the meaning of Article 3, the precedence of agreement clause.

Finally, the District cites the broadly conceived management rights clause contained in Article 15 of the contract. Specifically, it points out that paragraph "p" of Article 15 reserves to the District the right to "schedule classes and assign workloads." In view of the contract's silence on the subject of P.E. preparation periods, Board Policy #310, and the contract's management rights clause, the District argues that to uphold the grievants' claim would be to rewrite the contract to include a provision never agreed to by the parties.

Unfortunately, for the District's position, this argument overlooks a crucial phrase found in the opening paragraph of Article 15: "except as limited by this Agreement..." Obviously, the District does retain broad powers to manage the educational program. No question, for instance, is raised about the District's right to reduce the physical education program. However, the inclusion of a maintenance of standards clause does limit the rights of management in this instance. The deprivation of the grievant's P.E. preparation period is a violation of the standards of employment guaranteed by the contract. The grievance is sustained.

# HANDOUT MASTERS

HANDOUT #1

HYPOTHETICAL GRIEVANCE

Sweatshop Elementary School (SES) is the only K-8 elementary school in the Saltmine School District. For many years the physical education program at SES has been provided by the building P.E. teacher, who took over each regular class in the building for one period every week. For the last three years, when a regular teacher's class was scheduled for physical education, the teacher had been permitted a once-weekly preparation period in addition to the minimum daily preparation period for elementary teachers provided in the Saltmine School District Collective Bargaining Agreement (Article 6).

Like many other districts, Saltmine has recently experienced an enrollment decline. As a result, the district has suffered a $50,000 reduction in state aid during each of the last two years, amounting to about 10 percent of the budget. Faced with the need to reduce the budget, the school board reduced the SES physical education teacher's appointment to half-time as one of many cost-cutting measures. As a result the principal of Sweatshop, Simon Legree, was forced to reduce the P.E. program by half.

After informal consultation with his staff, Simon determined that for several reasons physical education was more important for older students than for younger students.

1. Primary students at SES already enjoyed more recess time and a shorter school day than upper grade students.

2. The physical education teacher advised that older students were more able to profit from physical education activities due to differences in maturity.

3. Test scores in reading and mathematics indicated that primary students as SES were well below the national average and several parents had called to have their children scheduled for more time in these basic subjects.

Accordingly, on April 15, Simon announced that the P.E. program for the following year would be restricted to grades 6, 7, and 8. Although the primary teachers quickly realized this change meant an end to their additional weekly preparation period, it was not until the first week of school in September that they approached Legree and demanded the return of the once-weekly preparation period. Upon his refusal, the union filed a grievance charging that

1. the District failed to carry out its duty to bargain over changes in working conditions prior to Simon's announcement of the new P.E. schedule.

2. Legree's new P.E. program constituted a violation of the contract in that it discriminated unfairly against primary teachers. Teachers in grades 6, 7, and 8 continued to receive a weekly preparation period while primary teachers did not.

The District contended that the grievance was not arbitrable because it was not filed in a timely manner and did not meet the definition of a contract grievance.

After moving through the steps of the grievance process, the matter was submitted for binding arbitration. The arbitrator was called upon to resolve four issues:

1. Is the grievance arbitrable under the terms of the contract?
2. Did the District fail to meet its duty to bargain prior to eliminating the primary teachers' once-weekly preparation period?
3. Did the District, by continuing preparation periods only for the upper grade teachers, unfairly discriminate against primary teachers?
4. Did the District, by eliminating primary teachers' once-weekly preparation period, violate the maintenance of standards clause?

Your Task:

Assume you are the arbitrator. Based on the facts presented and your analysis of the attached contract provisions, respond to each of the issues presented. Include in your response a brief summary of the rationale for your decision.

## Article 4
## Maintenance of Standards

The parties to the Agreement pledge that employment benefits enjoyed by unit members shall be continued during the life of the Agreement at not less than the highest standards in effect as of the date the Agreement is signed.

## Article 6
## Preparation Time

Every member of the bargaining unit shall receive at least one preparation period during the regular work day. At the elementary level each unit member shall have at least thirty (30) minutes of continuous preparation time during the regular work day. At the secondary level, each unit member shall have at least fifty (50) minutes of continuous preparation time during the work day.

## Board Policy #130 (excerpt)

It shall be the policy of the District to provide for teachers the maximum preparation time permitted by financial and program considerations. The determination of the amount of preparation time shall be at the sole discretion of the District.

## Article 7
## Agreement Has Precedence

This agreement shall modify, replace, or add to any policies, rules, regulations, procedures, or practices of the District which shall be contrary to or inconsistent with its terms. The provisions of this agreement shall be incorporated into and become part of the established policies, rules, regulations, practices, and procedures of the District.

## Article 9
## Grievance Procedure

9.1 PURPOSE: The purpose of the grievance procedure is to secure at the lowest possible level, equitable solutions to matters which may be grieved under this procedure.

9.2 DEFINITIONS

9.2.1 GRIEVANCE: A "grievance" is a claim based on an event or condition which affects the conditions or circumstances under which a unit member works, allegedly caused by inequitable or unfair application of established administrative rules and regulations, written school board policies, or the interpretation, application, or violation of provisions of this Agreement.

9.2.2 AGGRIEVED PERSON: An "aggrieved person" is the person or persons making the claim. The Association may be an "aggrieved person" in instances where an alleged contract violation affects the Association or a clearly defined class of unit members.

9.2.3 PARTY IN INTEREST: A "party in interest" is the person or persons making the claim and any person who might be required to take action or against whom action might be taken in order to resolve the claim.

9.2.4 REPRESENTATIVE: A "representative" is anyone, including an attorney, whom a party in interest selects to speak for and/or to advise him or her.

9.2.5 IMMEDIATE SUPERVISOR: An "immediate supervisor" is the employee who has direct supervisory responsibilities over the aggrieved person.

9.2.6 DAY: A "day" shall mean a regular work day, excluding Saturdays, Sundays, vacation days, and holidays.

9.3.1 INFORMAL LEVEL: Before presenting a written grievance, the aggrieved party should attempt to resolve the matter by informal conference with his or her immediate supervisor, principal, or other administrator who has jurisdiction in the matter. The unit member shall notify the Association, and a representative of the Association shall be given the opportunity

to be present at any meeting under this section. In instances where the Association does not represent the grievant, a representative of the Association may express the views of the Association, if the association representative believes that the adjustment proposed is inconsistent with the terms of the collective bargaining agreement.

9.3.2 LEVEL ONE - PRINCIPAL OR IMMEDIATE SUPERVISOR OR OTHER ADMINISTRATOR: a) If a dispute is not resolved at the informal level, the aggrieved person or a representative shall present the grievance in writing on the appropriate form to the principal or immediate supervisor or other administrator who has jurisdiction in the matter within twenty (20) days of the aggrieved person's knowledge of an act, omission or event giving rise to the grievance. b) This statement shall be a clear, concise statement of the grievance, the decision rendered, if any, at the informal conference, and the specific relief requested. It shall be signed by the aggrieved person. c) The principal or immediate supervisor or other administrator to whom the grievance is directed shall communicate his or her decision to the aggrieved party in writing within ten (10) days after receiving the grievance.

9.3.3 LEVEL TWO - SUPERINTENDENT: a) If the aggrieved person is not satisfied with the disposition at Level One, or if no decision is rendered within ten (10) days after the

presentation of the grievance, he or she may appeal the grievance to the Superintendent by delivering a written notice of appeal to the Superintendent's office within five (5) days after receiving notice of the decision, or within fifteen (15) days after presentation of the grievance, if no written decision was rendered. b) The appeal shall include a copy of the original grievance, the decision rendered, if any, and a concise statement of the reasons for the appeal and the specific relief requested. c) The Superintendent shall hold a hearing and make a decision within fifteen (15) days. d) The Superintendent shall communicate his decision in writing to the Association and the parties in interest within fifteen (15) days after receipt of the notice of appeal.

9.3.4 LEVEL THREE - ARBITRATION: a) If the aggrieved person is not satisfied with the disposition of his or her grievance at Level Two, he or she may, within five (5) days after a decision by the Superintendent, request in writing that the Association submit the grievance to arbitration, if the grievance qualifies for arbitration. In no case, unless mutually agreed otherwise, shall a grievant be compelled to wait more than thirty (30) days after notice of appeal to the Superintendent before requesting arbitration.

A dispute qualifies for arbitration if it is a contract grievance. A contract grievance is one which pertains to any dispute about the interpretation or application of the collective bargaining agreement between the parties.

If the Association, which has a duty of representation to its members, determines that the contract grievance is meritorious, it may submit the grievance to arbitration within ten (10) days after receipt of a request by the aggrieved person and shall notify the Superintendent of that intent in writing. b) Within ten (10) days after such a written notice or submission to arbitration, the Superintendent and Association shall attempt to agree upon a mutually acceptable arbitrator and shall obtain a commitment from said arbitrator to serve. If the parties cannot reach agreement on an arbitrator or obtain such a commitment within the ten (10) day period, as they have in the past, they shall submit the selection of the arbitrator to AAA and be bound by the rules of that agency. c) The aribtrator so selected shall hold hearings promptly and shall issue his decision not later than thirty (30) days from the date of the close of the hearings, or, if oral hearings have been waived, then from the date that the final statements and briefs on the issues are submitted to him. The arbitrator's decision shall be in writing and shall set forth his findings of fact, reasonings, and conclusions on the issues submitted. The arbitrator's authority is limited to interpreting this agreement.

The arbitrator shall be without power or authority to make any decision which requires the commission of an act prohibited by law or which is violative of the terms of this Agreement. The decision of the arbitrator shall be submitted to the Board and the Association and shall be final and binding on the parties. d) Disputes over the arbitrability of a grievance shall be submitted to the arbitrator. The arbitrator shall hear evidence on both arbitrability and the merits of the grievance but shall rule on the question of arbitrability first. e) Costs for the services of an arbitrator, including per diem expenses, if any, and actual and necessary travel, subsistence expenses, and the cost of the hearing room shall be borne equally by the Board and the Association. Any other expenses incurrred shall be paid by the party incurring them.

9.3.5 LEVEL THREE - SCHOOL BOARD: a) If a grievance involves a board policy, administrative rule, or regulation not covered by the collective bargaining agreement, the aggrieved person, if not satisfied with the Superintendent's disposition of the grievance at Level Two, may appeal the grievance to the Board of Directors of the District. Such appeal shall be made in writing within five (5) days after a decision by the Superintendent; or, if no decision has been rendered by the Superintendent within ten (10) days, after the Superintendent's hearing.

b) The appeal shall include a copy of the original grievance; the decisions rendered by the principal or immediate supervisor or other administrator and by the Superintendent; a clear, concise statement of the reasons for the appeal; and the specific relief requested. c) The Board of Directors shall hold a hearing on the appeal not later than its second regular meeting following the filing of the notice of appeal from the Superintendent's decision. d) If the Board finds that it cannot reach a proper decision on the record, it may re-open the record for the taking of additional evidence. The Board shall allow time for oral argument by the parties in interest, or other representatives. e) The Board shall render its decision in writing to the parties in interest not later than twenty (20) days after the close of the hearings. The decision of the Board shall be final and binding on the parties.

## Article 15
## District's Rights

It is recognized that the Board has and will continue to retain the rights and responsibilities to operate and manage the school system and its programs, facilities, properties, and activities of its unit members. Except as limited by this

Agreement and applicable law, without limiting the generality of the foregoing above, it is expressly recognized that the Board's rights and responsibilities include:

a) the right to determine the location of the schools and other facilties of the school system;

b) the determination of the financial policies of the district;

c) the determination of the management, supervisory, or administrative organization of each facility in the system and the selection of unit members for promotion to supervisory, management, or administrative positions;

d) the maintenance of discipline and control and use of school system property and facilities;

e) the determination of safety, health, and property protection measures;

f) the enforcement of rules and regulations now in effect and the establishment of new rules and regulations from time to time;

g) the direction and arrangement of all the working forces in the system, including hiring, suspending, discharging, disciplining, or transferring unit members and maintaining files to carry out this function;

h) relieving unit members from duty for poor or unacceptable work or for other legitimate reasons;

i) creation, combination, modification, or elimination of any teaching position;

j) the determination of the size of the working force and the allocation and assignment of work to unit members;

k) the determination of policies affecting the election of unit members, the establishment of quality standards, and judgment of unit member performance;

l) the layout of the equipment to be used and the right to plan, direct, and control school activities;

m) the determination of processes, techniques, methods, and means of teaching the subjects to be taught;

n) the establishment of hours of employment;

o) the determination of the time, days, and manner of payment;

p) the scheduling of classes and assignments of work loads;

q) selection of textbooks, teaching aids, and materials; and

r) assignment for all programs of an extracurricular nature.

HANDOUT #2

GRIEVANCE ANALYSIS FORM

Question #1 - Is the grievance arbitrable under the terms of the contract? Rationale:

Question #2 - Did the District fail to meet its duty to bargain prior to eliminating the primary teachers' once-weekly P.E. preparation period? Rationale:

Question #3 - Did the District, by continuing preparation periods only for upper grade teachers, unfairly discriminate against primary teachers? Rationale:

Question #4 - Did the District, by eliminating primary teachers' once-weekly P.E. preparation period, violate the maintenance of standards clause? Rationale:

HANDOUT #3

PRECEDENCE OF AGREEMENT CLAUSE

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

## SAMPLE ZIPPER CLAUSE

All items proposed by the union, whether agreed to or rejected, will not be subject to re-negoiation until negotiations for a new contract commence. Items included within the scope of bargaining which were or are not proposed by the union shall likewise not be subject to negotiation during the life of the Agreement.

# TRANSPARENCY MASTERS

## The Rise of Teacher Bargaining

- -Negotiations in 37 states.
- -Strikes legal in 7 states.

## Implications for Management

- -Changes in School Board Authority
- -Changes in Superintendent's Authority
- -Changes in Principal's Work

1. Grievance Procedures
2. Maintenance of Standards
3. Precedence of Agreement

## Purposes:

1. Arbitrary exercise of authority.
2. Range of conflicts.

## The Contract's Definition of Grievance

1. Contract language
2. Board policies
3. Administrative rules
4. Past practices

**9.2.1 GRIEVANCE:** A "grievance" is a claim based on an event or condition which affects the conditions or circumstances under which a unit member works, allegedly caused by inequitable or unfair application or established administration rules and regulations, written school board policies, or the interpretation, application, or violation of provisions of this Agreement.

## IMPLICATIONS:

1. Challenges to decisions

2. Reinterpretations of policies or rules

**Arbitrability:**

1. Procedural
2. Substantive

9.32 a) If a dispute is not resolved at the informal level, the aggrieved person or a representative shall present the grievance in writing on the appropriate form to the principal or immediate supervisor or other administrator who has jurisdiction in the matter within twenty (20) days of the aggrieved person's knowledge of an act, omission or event giving rise to the grievance.

## GRIEVANCE (9.2.1):

. . . established administration rules and regulations, written school board policies, or the interpretation, application, or violation of provisions of this Agreement.

## ARBITRABLE GRIEVANCE (9.3.4):

A dispute qualifies for arbitration if it is a **contract grievance.** A **contract grievance** is one which pertains to any dispute about the interpretation or application of the collective bargaining agreement between the parties.

## ARTICLE III

# MAINTENANCE OF STANDARDS CLAUSE (1)

**All conditions of employment,** including working hours, extra compensation for duties outside regular working hours, relief periods, leaves, and general working conditions shall be maintained **at not less than the highest minimum standards in effect in the district at the time this agreement is signed,** provided that such conditions shall be improved for the benefit of Union members as required by express provisions of this Agreement.

When the school district is in a period of financial hardship the maintenance of standards may be modified.

# MAINTENANCE OF STANDARDS CLAUSE (2)

## PREAMBLE—INTENTION OF PARTIES

A. The School Board reserves its rights and power in policy matters which are inherently managerial in character which shall not be subject to the grievance procedure established in this Agreement.

B. The School Board, its agents and representatives, agree to treat all of the employees fairly and reasonably, **and will not unreasonably deprive the employees of any of the benefits they now enjoy.**

# ARBITRATOR'S RULING

-Teachers tried to win preparation periods.
-District refused.
-District "won" a management rights clause.
-But District agreed to Maintenance of Standards.
-Past practice gave teachers a preparation period.
-District can't take away preparation periods.

Taken from: Arbitration Between South Allegheny School District and South Allegheny Education Association, 106 Arbitration in the Schools 6, 1978 (Irwin Dean Jr., Arbitrator)

## Types of Precedence of Agreement Clauses

1. Establish supremacy of contract.
2. Require bargaining over mandatory subjects.

Elements of the Employment Relationship:

1. Mandatory Subjects
2. Permissive Subjects

## Purpose of the Precedence of Agreement Duty to Bargain Clause

1. Reaffirm duty to bargain.
2. Subject failure to bargain to grievance procedure.